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Jean-Louis Gueret

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EXAMINER

RUNNING, RACHEL A

ART UNIT

PAPER NUMBER

3732

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DELIVERY MODE

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 85-100 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kogyo (JP 63-17031) in view of Playe (US 5,992,427).

Kogyo discloses a device comprising at least two containers (2,2A) configured to be superposable on a stacking axis. One container (2) is configured as a lid with a hinge (9) with the container added thereto. Each container defines a housing. The device further comprises a lid (3) and an applicator member (5c) is secured in one of the housings (see figure 1). The containers pivot about one another about an axis not parallel to the stacking axis. There are at least two hinges (9). The hinges are angularly offset. One of the housings contains cosmetic. Though only two containers are shown, Kogyo discloses that more containers can be added as desired. Regarding the limitation of the axis of rotation of the hinges not being parallel, it is noted that in figure 1, the axis of rotation of the hinges are perpendicular and in figures 21-23 they are angularly offset so as not to be parallel. Kogyo does not disclose a receptacle body with a closure cap that is configured to be removably fixed to the receptacle body wherein the receptacle body is of a different shape than the containers.

Playe discloses forming the bottom of a container such that it may be used as a closure cap for a different receptacle (see Figures 3 and 4). It would have been obvious to one skilled in the art to make the bottom of the lowest container of Kogyo such that it may form a closure cap to another receptacle and fit it to such receptacle in view of Playe in order to provide the device with a means for containing a different type cosmetic (e.g. a cream or lotion or toner).

### ***Response to Arguments***

3. Applicant's arguments filed February 1, 2008 have been fully considered but they are not persuasive.

4. In response to applicant's argument that against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

5. In response to applicant's argument that neither Kogyo or Playe disclose a corresponding closure cap that is configured to be removable fixed onto a receptacle body wherein the receptacle body is of a different shape than the containers, Playe does disclose a corresponding closure cap (23) that is configured to be removable fixed onto a receptacle body (21) wherein the receptacle body is of a different shape than the containers (see Figures 3 and 4).

6. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by

combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Playe is used as the teaching reference to show a receptacle that has a housing for an applicator attached to the closure cap.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL A. RUNNING whose telephone number is (571)272-1917. The examiner can normally be reached on Monday-Friday 7:00 am - 4:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/  
Primary Examiner, Art Unit 3732

/Rachel A. Running/  
Examiner  
Art Unit 3732

6/9/2008